

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TAMMY KITZMILLER; et al.,

4 Plaintiffs . CIVIL ACTION NO. 04-CV-2688

5

6 DOVER AREA SCHOOL DISTRICT, . . . (JUDGE JONES)  
et al., . . .

Defendants

## 16 APPEARANCES:

AMERICAN CIVIL LIBERTIES FOUNDATION OF PA  
BY: PAULA K. KNUDSEN, ESQUIRE

For - Plaintiffs

20 THOMAS MORE LAW CENTER  
BY: PATRICK T. GILLEN ESQUIRE

For - Defendants

KILLIAN & GEPhART LLP  
BY: JANE GOWEN PENNY, ESQUIRE

For = Jennifer Miller

ALSO PRESENT: Michael Baksai



## 1 STIPULATION

2 It is hereby stipulated by and between the  
3 respective parties that sealing, certification and filing  
4 are waived; and that all objections except as to the form  
5 of the question are reserved until the time of trial.

6

7 ROBERT LINKER, called as a witness, being duly  
8 sworn, was examined and testified, as follows:

9 BY MR. GILLEN:

10 Q. Good morning.

11 A. Good morning.

12 Q. My name is Pat Gillen. I have introduced myself off the  
13 record. I am doing it again for the record. I am the  
14 attorney who represents the defendants in this action,  
15 Dover Area School District.

16 A. Okay.

17 Q. As you know, this is the day and place set for your  
18 deposition which I conceive of as really just my chance  
19 to ask you questions and get your side of the story.  
20 There are a few features of this process that are  
21 unusual, and I would like to bring those to your  
22 attention?

23 A. Okay.

24 Q. The first is that Vicki, the court reporter, records the  
25 exchange between you and I. That places a premium on

1 Q. While he was there?

2 A. Just that e-mail. But for him -- he was a bio man. So  
3 it was great to talk to him about stuff. But I don't  
4 remember specifically how should I teach, none of that.

5 Q. Or you don't remember him coming to you with concerns  
6 about the teaching of biology?

7 A. No.

8 Q. Or anything like that?

9 A. No.

10 Q. When did Mr. Hamilton leave?

11 A. This year it is Mr. Riedel. The previous two years  
12 before that was Mrs. Peterman. And then it was Hamilton  
13 and Redding somewhere. Maybe three, four years ago.

14 Q. Good enough. That brings us to 2003 so far as I am  
15 concerned. Now if we look at the first half of that  
16 year, January through June, do you recall conversations  
17 relating to biology, the instruction in Evolutionary  
18 Theory, the biology text or Intelligent Design Theory  
19 during that first half of 2003?

20 A. The first time I remember -- I don't know which came  
21 first, if it was the stuff about the textbooks, about  
22 our new textbooks, or I remember being in a meeting with  
23 Mr. Baksa and him asking us how we teach the actual  
24 evolution.

25 Q. All right. And you are sort of linking those

1                   recollections with 2003. Can you give me a better sense  
2                   for the time? Try and date it by the school year.

3                   Was it the spring of 2003, were you moving towards  
4                   the summer; can you remember?

5   A.   I really can't. Those dates pretty much all run  
6                   together. The only reason is I am in wrestling from  
7                   October to -- if I don't get in the state tournament --  
8                   to March. If I knew what principal was there, maybe I  
9                   could at that time.

10   Q.   Let's approach it from that perspective. Dr. Peterman  
11                   was the principal for some of your tenure here at Dover.  
12                   While she was principal, do you remember having  
13                   discussions with Dr. Peterman about --

14   A.   No.

15   Q.   -- biology instruction?

16   A.   No.

17   Q.   Let's see then, do you recall speaking -- you have some  
18                   recollection of the discussion with Mr. Baksa. I take  
19                   it you think it was in 2003; is that right?

20   A.   Yes.

21   Q.   How about let's look at the fall of 2003, do you  
22                   remember a meeting with Mr. Bonsell?

23   A.   Oh, yeah. I think that happened right after Mr.  
24                   Baksa's.

25   Q.   Do you think that that meeting occurred in the fall of

1           2003, or can you place it?

2 A.       I really can't place it. I'm sorry.

3 Q.       Good enough. Tell me anyway -- if I understand you  
4           correctly, the exchange you recall with Mr. Baksa was  
5           prior to the meeting with Mr. Bonsell?

6 A.       Correct.

7 Q.       Tell me about the exchange with Mr. Baksa. Was this the  
8           first exchange of that nature you can recall?

9 A.       Yes, that I can personally recall.

10 Q.       Am I correct that it is shortly before the meeting with  
11           Mr. Bonsell?

12 A.       Yes.

13 Q.       Who was present? Was anyone else present during your  
14           exchange with Mr. Baksa concerning how you presented  
15           Evolutionary Theory?

16 A.       Yeah. I remember Jen Miller definitely because we are  
17           right across the hall from each other. We do a lot of  
18           similar stuff and share similar stuff.

19           I just remember talking to Mr. Baksa and telling  
20           him exactly how I present it. The other people, I am  
21           not sure.

22 Q.       Bert Spahr, I know she is chemistry, but was she  
23           present?

24 A.       I would say yes because she is my Department head, but I  
25           can't be definite.

1 Q. Good enough. How about Leslie Prall, was she present at  
2 that meeting?

3 A. I don't know if at that meeting.

4 Q. Was Leslie Prall teaching biology in 2003?

5 A. I am going to say yes. She has been here -- she is on  
6 her tenure year I think, so I think that's three years.

7 Q. I am just trying to get a sense --

8 A. Is this my age? I am getting old. I can't remember  
9 this stuff.

10 MS. PENNY: I hope not, Bob.

11 A. I am going downhill already.

12 BY MR. GILLEN:

13 Q. I am just trying to get a sense for who would be there.

14 A. I remember more so the meeting that Mr. Bonsell -- like  
15 the people sitting around than I believe that one. But  
16 the other one, that is the one I can't.

17 Q. Tell me what you can in brief about what you told Mr.  
18 Baksa about the way in which you presented Evolutionary  
19 Theory.

20 A. Me, personally, I told him that on the chalk board when  
21 I started out, I take the chalk board and split it down  
22 in half. I write Evolution on one side. And on the  
23 other side, I write Creationism.

24 I start out with Creationism saying that this is  
25 based on religion and the writings of Bibles. That is

1 what everything is based on.

2 I told them that I am not going to talk to you  
3 about this side because I am not an expert on it. And  
4 then my schooling is on this side. I am a scientist.  
5 And on the evolutionary side are facts or the basis is  
6 on fossil records, DNA, skeletal remains. And then I  
7 would actually go into the Evolution side.

8 Q. Okay. Did Mr. Baksa ask you any other questions about  
9 that, or was he just gathering information?

10 A. I think he was gathering information.

11 Q. How about Jen Miller, do you recall what she said to Mr.  
12 Baksa during this exchange?

13 A. The only thing I remember her saying was we mainly teach  
14 it by adaptation or natural selection, change over time.  
15 But I don't believe she -- I think I was the only person  
16 to say something about dividing the board.

17 Q. Did Jen Miller mention anything about whether she  
18 addressed Creationism in the preliminary discussion in  
19 connection --

20 A. I am sorry.

21 Q. -- with the presentation of Evolutionary Theory?

22 A. I am sorry. I can't remember that.

23 Q. That is fine. Do you recall Mr. Baksa saying anything  
24 to you about the reason for his inquiry during that  
25 exchange with yourself and Jen Miller?

1 A. No.

2 Q. You have referenced a meeting with Mr. Bonsell. Were  
3 there any other exchanges with you and the  
4 administration or any of your science colleagues about  
5 the presentation of Evolutionary Theory prior to the  
6 meeting with Mr. Bonsell?

7 A. No.

8 Q. So let's get to that meeting. How did you learn about  
9 that meeting, Bob?

10 A. Probably from my Department chair. I knew that it was  
11 going to be second period, which is great for me because  
12 I had prep period. But I knew that they were having a  
13 little trouble because I think Ms. Prall had class so  
14 they were going to have to get a sub in for her.

15 We were supposed to be down in the principal's  
16 office, which is now totally different because that was  
17 before the construction. And the people that were  
18 there, I remember Jen Miller was sitting to my right.  
19 And then it was Mr. Bonsell. I remember Mr. Baksa  
20 there. I remember Mr. Rehm there. I believe Mr. Miller  
21 was there, which would be our assistant principal now.

22 Q. Is that Bill Miller?

23 A. No. That would be -- there's so many -- I am thinking.  
24 I don't know. I also address him as Mr. Miller, but he  
25 is our assistant principal now.

1                   Ms. Prall was there. And I don't know if  
2                   Mr. Eshbach was there. I can't picture him.

3 Q.            How about Dr. Peterman, do you recall her being present?

4 A.            No.

5 Q.            Dr. Nilsen?

6 A.            Oh, Ms. Spahr was there, too. I'm sorry.

7 Q.            How about Dr. Nilsen?

8 A.            No.

9 Q.            And again sort of when you received notice of the  
10                meeting, what was your sense for its purpose, Bob?

11 A.            I wasn't real sure. I thought I heard we were going to  
12                talk about how we teach the subject of evolution. I  
13                thought I just did that at a meeting prior. So I wasn't  
14                real sure, but I know Mr. Bonsell was going to be there.

15 Q.            Did you have any discussion with your colleagues about  
16                the meeting leading up to it?

17 A.            Not me personally.

18 Q.            How did the meeting begin?

19 A.            I think Mr. Baksa started it out the reason we are here  
20                is Mr. Bonsell just wants to know how you teach the  
21                subject of Evolution. And Jen Miller was our  
22                spokesperson because we teach very similar. She just  
23                was the spokesperson.

24                   And then I remember Mr. Bonsell going around  
25                asking well, I think he didn't understand one of the

1 terminology she used. We were saying that origin of  
2 life is not the same thing as origin of species. And I  
3 remember them -- us clarifying the differences and just  
4 telling him how we teach it as change over time.

5 It is not much different than adaptation, besides  
6 it is over a longer period of time. I remember him  
7 asking is that how -- I remember Mr. Bonsell looking at  
8 me. I don't remember speaking in that meeting besides  
9 to say yes, that is how I teach it also because she was  
10 our spokesperson.

11 Q. You say Jen Miller was your spokesperson. Was that by  
12 agreement beforehand, or did she just sort of speak up  
13 first?

14 A. I think it was agreement. What do you want -- why don't  
15 we just let one person speak? I said great. You do it.

16 Q. All right. So this origin of life versus origin of  
17 species, how did that come up? How did that terminology  
18 come to be involved?

19 A. I think Mr. Bonsell actually asked the question about  
20 it. And I believe he said well, we don't teach origin  
21 of life. And we said we don't either. We teach origin  
22 of species, how species would have came about, different  
23 types of species evolving and changing.

24 And then he understood it. And he said is that  
25 the way you do it? Yes.

1 Q. Was there anyone else who spoke up from the faculty side  
2 in connection with this meeting? Do you remember Bert  
3 Spahr bringing information to that meeting?

4 A. She always has information.

5 Q. Do you remember some discussion at this meeting about  
6 the legal issues?

7 A. Yes. She had stacks of papers all the time, but I  
8 believe they were dealing with the Evolution Theory of  
9 court cases.

10 Q. Do you recall Mrs. Spahr bringing to Mr. Bonsell's  
11 attention a concern about teaching Creationism? Did  
12 that come up during this meeting?

13 A. I don't remember them having an exchange of words at  
14 all.

15 Q. Well, she brought material. Do you remember her passing  
16 it out or handing it over to him?

17 A. No.

18 Q. And say take this?

19 A. I don't remember that.

20 Q. How about Mr. Rehm, do you recall him saying anything at  
21 the meeting?

22 A. Yes. He had -- I cannot remember what exactly he was  
23 talking about, but he was speaking directly to  
24 Mr. Bonsell about -- it was something to do with  
25 Evolution or -- actually, he was teaching I think it is

1                   And obviously, Mr. Rehm spoke.

2                   I remember sitting there going well, I didn't say  
3                   anything besides yes, that's how I do it.

4   Q.    Do you recall any discussion of students and their  
5                   reaction to the presentation of Evolutionary Theory  
6                   during this fall of 2003 meeting?

7   A.    No.

8   Q.    Do you recall any discussion of religion? Was there any  
9                   discussion of religion at this meeting?

10   A.    No.

11   Q.    When you left the meeting, Bob, what impression did you  
12                   have?

13   A.    I didn't know -- I was -- why did I get pulled out of  
14                   class for this? I am just going to -- I remember me  
15                   personally saying well, I am going to go back. I am  
16                   going to look at the book and just teach Evolution  
17                   totally. I don't want any controversy in this.

18                   I remember ever since that meeting, I didn't draw  
19                   the line down the board anymore. I just strictly said  
20                   here is Evolution. And if somebody asked, I just said I  
21                   can't talk about that side. I personally did that I  
22                   think because it was like controversial now -- why  
23                   people asking me how I am doing this.

24   Q.    I see. So you just thought am I right, that your sense  
25                   was there seems to be some issue here, in abundance of

1 caution, I am just going to present what is in the book?

2 A. Yes.

3 Q. Good enough. When you came away from the meeting, did  
4 you have any sense that there was going to be action  
5 taken by Mr. Bonsell, or did you feel like his concerns  
6 had been addressed?

7 A. I felt like his concerns were addressed. Nothing was  
8 coming out of it. We showed him how we were teaching  
9 it.

10 Q. Did he offer any criticisms of your manner of  
11 presentation?

12 A. No.

13 Q. If we look at the period between this fall -- let's look  
14 at the aftermath of this meeting. Did you get together  
15 with your colleagues to discuss the meeting?

16 A. I might have said to them why did I lose my prep period  
17 over a meeting that I just explained? But that is the  
18 extent of me getting into that. I am not a talker. I  
19 am just going to go do my job.

20 Q. That is all I am asking. Were you aware of any of your  
21 other peers, your colleagues in the Science Department,  
22 getting together to discuss the meeting?

23 A. No.

24 Q. If you look at the period through the end of 2003, was  
25 there any other discussion of Evolutionary Theory or the

1 presentation of Evolutionary Theory between yourself and  
2 any members of the administration?

3 A. No.

4 Q. How about your colleagues, did they come to you at any  
5 time for the remainder of 2003 and say I had another  
6 meeting with Mr. Baksa on the issue or anything of that  
7 nature?

8 A. No. Just one minor -- when I said -- I know my  
9 colleague, Jen Miller, she used to do a timeline. The  
10 kids were always in the hall at the end of the semester  
11 because that is when Evolution came about.

12 Whether it was time constraints or not, I know she  
13 didn't do that anymore.

14 Q. How is that, Bob? How did you learn that?

15 A. Just because she wasn't in the hall. And I said don't  
16 you do the timeline? She said no, I am not going to do  
17 that. She didn't give really -- I don't remember a  
18 reason why.

19 Q. Just to make sure I am understanding you. Did she put a  
20 display up in the hallway?

21 A. No. They actually had a little like you find in a cash  
22 register, the tape. And they would roll it out and then  
23 mark different times of -- I never did it. It was  
24 different times of life forms coming about.

25 Q. So it was an evolutionary timeline?

1 A. Yes, correct.

2 Q. How was it displayed, Bob?

3 A. I don't know if it was ever displayed. They used the  
4 hallway because they were so long on the ground and  
5 worked on it. I don't know if it was ever displayed in  
6 the classroom or anything.

7 Q. I understand you better now. As part of a classroom  
8 project, she would have the kids create a timeline using  
9 register tape in the hallway?

10 A. Correct.

11 Q. During her class period; is that correct?

12 A. Correct.

13 Q. Good enough. Now let me just ask you in 2003, the text  
14 selection process, were you a part of that?

15 A. Yes, just again myself and Jen Miller.

16 Q. Now, again, I am referring to 2003. Recall if you can,  
17 Bob, is that the period in which the Science Department  
18 came up for new text in the ordinary course?

19 A. Yes.

20 Q. Just briefly describe your participation in the text  
21 selection process in 2003.

22 A. Jen or Bert Spahr would order the books because all the  
23 companies obviously want you to buy their book. They  
24 would send out, and a whole packet would come. Some of  
25 them had CD's and everything. I was just more concerned

1 Q. Let me ask you about that. Did the biology text come up  
2 in the fall of 2003 in the meeting with Mr. Bonsell?

3 A. I don't remember anything about a text.

4 Q. Do you recall at some time in the fall of 2003 learning  
5 about the notion that the biology texts weren't being  
6 used?

7 A. Yes.

8 Q. Tell me what you recall about that, Bob.

9 A. I think I personally explained -- I don't know -- I know  
10 it was to Mr. Baksa the one time. He come over and said  
11 why is somebody -- or somebody at the Board meeting  
12 asked them why these textbooks are not being used. I  
13 remember going how many times did I explain this?

14 In one year, which I am not sure of the exact  
15 year, we had all ninth graders and tenth graders taking  
16 biology because they were flip flopping tenth grade  
17 biology back to ninth grade and making STS, the  
18 environmental course, tenth grade. And that was all  
19 because if a test come out, an assessment test, that  
20 they wouldn't have any bio or environmental by the time  
21 the test come out.

22 So we didn't have enough books for all of the kids  
23 because there was too many sections at once.

24 Q. Because you were teaching two grades in one year?

25 A. Correct. I said it is simple. We will just make a

1 classroom set. It was no big deal to me because I am  
2 not a teacher that opens up the book that says okay  
3 class, let's read this paragraph.

4 I said we will make a classroom set. If any child  
5 wants to take it home, great, we will just sign it out.

6 And the statement you asked me, I heard that a  
7 couple of times, and it made me mad. Because they had  
8 books. Not only that book, they had other books in the  
9 room that they could reference.

10 Q. And you took that information to Mr. Baksa?

11 A. Yes, I remember.

12 Q. Again looking at 2003 and this text process, do you  
13 recall at any time during 2003 being made aware of the  
14 Board's concerns about purchasing the book in 2003 as  
15 opposed to 2004?

16 A. I just remember Jen or Bert saying that they needed to  
17 review this book. They needed to -- and that was  
18 like -- that is why it was taking time. There was a  
19 committee that was supposed to review the book. That's  
20 all to the extent that I remember.

21 Q. Sure. Let me ask you this: Do you remember any  
22 discussion of comparisons of the book that the teachers  
23 had in 2003 as against the book that they were proposing  
24 to buy in 2003? Do you recall discussions of that kind  
25 of comparison taking place, people saying things like

1 A. I don't know.

2 Q. Good enough.

3 A. I'm sorry.

4 Q. It is fine. How about if we look at the spring of 2004,  
5 January through May for our purposes here, do you recall  
6 being present at any other meetings with Board members  
7 relating to biology?

8 A. No. Mr. Bonsell is the only one I have ever been  
9 present with in a meeting besides a hearing that I was  
10 with a Board member. That was with a student in my  
11 class.

12 Q. Let's look at just the same period in discussions with  
13 your colleagues about biology text or the biology  
14 curriculum.

15 In the spring period of 2004, did you have any  
16 discussions with your colleagues about the biology text,  
17 the biology curriculum?

18 A. For curriculum, this that is in front of me, I guess  
19 this is mine. This is the -- that was really all the  
20 curriculum. That is when we started having meetings  
21 with Mr. Baksa and Mr. Nilsen. I remember meeting with  
22 them with this stuff.

23 Is this the date you are talking about around  
24 then?

25 Q. No. Let's do this: We will mark the documents that you

1 have produced in one set as Linker 1.

2 (Linker Deposition Exhibit 1 was marked.)

3 BY MR. GILLEN:

4 Q. Bob, I am going to ask you to look at this little group  
5 of documents here that we have marked for purposes of  
6 this exhibit as Exhibit 1, Linker 1, and ask you if  
7 those are the documents you produced in response to my  
8 subpoena?

9 A. Yes.

10 Q. Are those the documents you were just referring to in  
11 your testimony?

12 A. Yes.

13 Q. The first page that you reference is a draft change to  
14 the biology curriculum that has enclosure XI-C in the  
15 lower right-hand corner; correct?

16 A. Correct.

17 Q. Those relate to the curriculum change in October, and we  
18 are going to get there.

19 A. Of '04?

20 Q. October of '04. But we are going to get there. For  
21 now, I just want to get a sense for the spring and  
22 summer from your perspective. It sounds like what you  
23 are saying is prior to roughly the October period, there  
24 wasn't a lot of discussion to which you were privy  
25 concerning the biology text or biology curriculum; is

1 that correct?

2 A. That is correct.

3 Q. And just to make sure I got you if we move through,  
4 let's just take that period from January and extend it  
5 all the way through August of 2004 before the school  
6 year begins.

7 A. Okay.

8 Q. Do you recall any conversations with your colleagues  
9 about the biology text or biology curriculum during that  
10 first eight months about of 2004?

11 A. Just that we were supposed to be getting it, and then we  
12 weren't getting it, now we are getting it. That is just  
13 the stuff I remember hearing.

14 What date -- the only -- why I can put a date with  
15 it is because at the end of last year, would that be  
16 when you are talking about, the very end of school last  
17 year?

18 Q. The end of the school year or the calendar year?

19 A. The school year.

20 Q. For 2004?

21 A. Correct. We had to have everything out of our rooms  
22 because they were doing construction -- brand new labs  
23 in my room and Jen's room. We had to take everything  
24 down to Bert's room and Rob Eshbach's room. That is  
25 when I remember hearing some stuff.

1                   Like they had to go to a meeting the day school  
2                   let out about -- I thought it was about textbooks. I am  
3                   thinking you are going to a meeting and school is  
4                   letting out about textbooks. That was just my mindset.  
5                   I'm going home. It's summer.

6   Q.   All right. So now I think I get you. So this is  
7                   roughly June of 2004?

8   A.   Correct.

9   Q.   And you are prepared to pack up and move on out for the  
10                  summer?

11   A.   And it was tough for me because I have to have  
12                  everything out. That is really what I was worried about  
13                  that last day. I got to have everything out of this  
14                  room.

15                   Actually, people were helping me from other  
16                  departments, but I wasn't worried about meetings and  
17                  stuff.

18   Q.   But you did learn that there was going to be a meeting?

19   A.   Yes.

20   Q.   Who did you believe would be involved in that meeting  
21                  you are referencing?

22   A.   Jen, Bert Spahr and some Board members.

23   Q.   Did they mention the Board curriculum committee?

24   A.   I don't know.

25   Q.   Good enough. All right. As you are getting ready to

1 pack up and leave, you hear about this meeting. In the  
2 period between June and August of 2004, did you have any  
3 discussion with your colleagues about the upshot of the  
4 meeting?

5 A. No. That would have been summertime; correct?

6 Q. Yes.

7 A. No.

8 Q. I think I know the answer to this question, but let me  
9 just make sure. Did you speak with any Board members  
10 about the biology text or biology curriculum from  
11 January through August of 2004?

12 A. No.

13 Q. Did you receive any calls at home from anyone about the  
14 biology text?

15 A. No.

16 Q. All right. How about the Board's deliberations on the  
17 purchase of the text, did you speak with your colleagues  
18 about the Board action for purchasing the text?

19 A. I don't know what you mean by Board action.

20 Q. Did you ever learn about the Board's vote on the Miller  
21 and Levine text; and if so, how? When did you learn  
22 they voted to?

23 A. I am sure I did because Bert would have said well, we  
24 got your textbooks. And I would have said great. I  
25 wouldn't know the date.

1 Q. It is evident that Bert is a force to be reckoned with.

2 Do you read the paper, the local papers, Bob?

3 A. Yes.

4 Q. Did you read the local papers during the summer months  
5 of 2004?

6 A. Yes.

7 Q. Did you have any discussions with your colleagues about  
8 reporting in the paper about the biology text or biology  
9 curriculum, anything like that?

10 A. No.

11 Q. How about during this period, did the administration  
12 contact you with any questions about the biology text or  
13 biology curriculum?

14 A. No.

15 Q. So is it right, Bob, that basically you were sort of  
16 back in the loop, so to speak, on this biology text,  
17 biology curriculum controversy when you returned for the  
18 school year in the fall of 2004; is that when the story  
19 picks up again for you?

20 A. Yeah. When you are saying the textbook --

21 Q. Yes.

22 A. It is like, great, I have my book. I don't know what  
23 happened all through -- I don't know how it got here,  
24 but I have my book now for me personally.

25 Q. Let me ask you about that. So far as you knew, it

1 sounds like in the spring of 2004, you heard from Bert  
2 at some point, we are going to get our book; is that  
3 correct?

4 A. Yes.

5 Q. And then pretty much, you left for the summer, came back  
6 for the school year, and your book was there?

7 A. Correct.

8 Q. As far as Bob was concerned, all things are copacetic?

9 A. That is great. I got my book.

10 Q. Good. So now how about *Of Pandas and People*? You  
11 return to school to give your instruction in biology.

12 Upon returning, were you introduced to the text *Of  
13 Pandas and People*?

14 A. Yeah. But the name probably I first saw it on a  
15 document something similar to this one. I think I saw  
16 the name before I ever saw the book.

17 Q. Okay. Good enough. And you are referring to the first  
18 page of Linker 1?

19 A. Correct.

20 Q. Good enough. Let me ask you about that. I think I  
21 know, but it seems you were not contacted during the  
22 summer for the purpose of reviewing a text called *Of  
23 Pandas*; correct?

24 A. No.

25 Q. You came back, and you have indicated that you probably

1       saw the title of the book in print before you ever saw  
2       the book?

3   A.    Yes.

4   Q.    It seems to me then, Bob, that you were not asked to  
5       review the book for content?

6   A.    No. I was given the book. I couldn't even tell you who  
7       actually gave it to me. I remember having it in my  
8       room, but nobody told me read it, study it.

9   Q.    Well, let me ask you this: Upon your return to school  
10       -- let's look at August and September together. During  
11       that period you are just back, were you privy to  
12       discussions with your colleagues about the incorporation  
13       of Intelligent Design Theory into the biology class?

14   A.    Yes.

15   Q.    Tell me about that then.

16   A.    These papers is when I really knew what was going on.

17   Q.    Again, you are referring to --

18   A.    When I see the word Intelligent Design and *Of Pandas and*  
19       *People* on Linker 1.

20   Q.    This is interesting. Let me just get it for the record.  
21       Bob is referring to the first page of Linker 1 which is  
22       a draft of the Proposed Curriculum Change.

23                   Is that the first you heard of it, Bob, looking at  
24       this document here, or was there discussion with your  
25       colleagues prior to this document which I will tell you

1                   you would have received probably between October 13th  
2                   and 18th of 2004?

3                   A.    I remember watching a video one time. That was  
4                   definitely at the end of school. There was a video.

5                   Q.    Was that in about June of 2004?

6                   A.    Yes.

7                   Q.    That's good.

8                   A.    I don't know if that said the word Intelligent Design or  
9                   anything with that.

10                  Q.    Let me ask you about that.

11                  A.    Okay.

12                  Q.    Looking at those materials, do you know -- who did you  
13                  look at it with?

14                  A.    I remember it was in Mr. Eshbach's room because that's  
15                  where we were putting all our stuff cleaning up. And  
16                  they said that the video came I think from Mr. Baksa.

17                                   I don't remember them saying we had to watch it,  
18                                   but me personally, I wanted to watch it because it  
19                                   talked about gaps in the Evolutionary Theory with many  
20                                   prominent scientists. I think it was probably a half  
21                                   hour an hour long.

22                                   It went through all the gaps that we actually even  
23                                   teach, some it talked about. I liked it. I thought it  
24                                   was neat to see the other side of the story or where  
25                                   these gaps were coming from.

1 I remember watching that and packing up, and then  
2 that was it. I don't remember Intelligent Design being  
3 associated with that film, just there was gaps in the  
4 Evolutionary Theory, and here are scientists to show  
5 you.

6 Q. On that score, were you party to discussions with your  
7 colleagues about well, this has some merit, or this is  
8 consistent with what we show anyway in the class? Did  
9 you discuss the video with your colleagues upon viewing  
10 or shortly thereafter?

11 A. Thereafter, we were leaving for school. So during the  
12 video, I remember saying this is good. That's their gap  
13 right there.

14 And then I remember saying well, you can find gaps  
15 in anything. That's what I remember saying, which is  
16 okay. They found the gaps, great.

17 Q. Now did you have any discussions with Mr. Baksa or any  
18 member of the administration about your impressions of  
19 the video and what it showed?

20 A. No.

21 Q. I take it you didn't speak with Board members about it?

22 A. No.

23 Q. As frequently happens going through this, you sort of  
24 remembered something in 2004 earlier. That's fine.

25 When you returned to school, in August, let's look

1 again then at any discussion of Intelligent Design  
2 Theory. Did that come to your attention at some time  
3 shortly after you returned to school?

4 A. Yes.

5 Q. And how, Bob?

6 A. I just remember the book -- somebody was donating the  
7 book to the school, and we were supposed to have a set  
8 of them in the classroom.

9 And I mean just my thinking, I guess then this  
10 stuff came out, I am not sure, but -- and then they were  
11 changing our curriculum to include Intelligent Design.

12 Q. All right. It seems like, Bob, that prior to receiving  
13 the first page of Linker 1 you really weren't all that  
14 caught up in the discussion of this matter; is that  
15 accurate?

16 A. It might have been around, but I wasn't into it I guess,  
17 if you want to say that, until I had to have meetings.  
18 Then I was into it.

19 Q. Let me ask you: It seems that essentially the way you  
20 look at it is when it's going to have some practical  
21 effect on my instruction, that's when I would give it my  
22 attention; is that correct?

23 A. Correct.

24 Q. And it seems to me, Bob, from what you are saying that  
25 prior to receiving the first page of Linker 1, you

1       really didn't have a sense that it was going to have a  
2       practical effect on your classroom instruction; is that  
3       correct?

4       A.     Correct.

5       Q.     And it seems to me that prior to the curriculum change  
6       which occurred in October of 2004, this really wasn't a  
7       big issue for you from your return in August up until  
8       October?

9       A.     Not really for me until these papers. I think that is  
10      when I got involved if you want to say.

11      Q.     And then you have referenced some meetings. Let's just  
12      go to that, the meetings that are connected to the draft  
13      curriculum that are part of Linker 1 here.

14           Just for the record, I will note that the first  
15      two pages of Linker 1 are two different drafts of  
16      Proposed Curriculum Changes. The first page has XI-C in  
17      the bottom right-hand corner and the note the origins of  
18      life are not taught in the lower left-hand corner.

19           The second page is similar, but does not have the  
20      note in the lower left-hand corner. It also has  
21      handwritten notations in the upper left-hand corner  
22      indicating October 18th.

23           Tell me what you can about the meetings you have  
24      referenced that are connected to these documents.

25       A.     I helped Jen Miller write this. That's probably why I

1 have that. I wanted my name in there because I helped  
2 write the first draft.

3 And all this new stuff -- truthfully, I have  
4 never -- the original one that I helped Jen write, I  
5 don't know where that is.

6 Q. Hold on a second.

7 A. All this other stuff is new stuff that Mr. Baksa would  
8 bring to us in our little meetings. Actually, I think  
9 Dr. Nilsen was at some of them.

10 Q. Let me do this: If you would, Bob, take a look at an  
11 exhibit that has been marked Miller 7. Take a look at  
12 the page of Miller 7 that has the Bates stamp number 19  
13 in the lower right-hand corner.

14 A. Okay.

15 Q. I would ask you to note that that cover memo refers to  
16 the attached document as the Recommended Changes to the  
17 Biology Curriculum from the Administration and Staff.  
18 And the lower right-hand corner of the memo references  
19 XI-B.

20 Then flip the page and turn your attention to the  
21 page with the Bates stamp number 20 in the lower  
22 left-hand corner, and look at that text.

23 If you compare the text of this document with  
24 Bates stamp number 20 with the text of the first two  
25 pages of Linker 1, you will note among other things that

1           in the column headed Materials and Resources, there is  
2           no reference to *Of Pandas*. Further, that in the bottom  
3           most entry, the second column UNIT  
4           Content/Concepts/Process, you will see the language  
5           there is different.

6           Looking at that, Bob, is this XI-B, Bates stamp  
7           20, the document you created with Jen Miller?

8   A.    I think there was one before this.

9   Q.    Really?

10   A.    Yes.

11   Q.    But looking at it, is that the teacher's version as you  
12           understand it?

13   A.    I don't know if we wrote any of these. I mean me  
14           personally or the -- we were shown these.

15   Q.    Okay. That's good. I want to know that. It seems like  
16           whatever input you had, you did not create the document  
17           yourself?

18   A.    Correct. I know there was at some time in one of the  
19           meetings, we said we would compromise our original,  
20           which I don't see the original -- I don't know if I  
21           would recognize it. But I don't ever remember the  
22           original having anything to do with gaps in Darwin's  
23           Theory.

24           I thought our compromise that was going back to  
25           Mr. Baksa and back to the Board had the word gaps in it.

1           That was our -- that is what I remember as our  
2 compromise.

3 Q.       You know what, I don't want to belabor this. If you  
4 look at the next page of Miller 7, you will see XI-C, I  
5 would ask you to note that that memorandum bills the  
6 attached document as a Second Draft of the Recommended  
7 Changes to the Biology Curriculum from the  
8 administration and staff.

9           Then if you look at the page following Bates Stamp  
10 number 22 --

11 A.       I am on that now.

12 Q.       You will see some highlighted text. Looking at it, Bob,  
13 does that at all prompt your recollection with respect  
14 to the compromise document that you have referenced?

15 A.       No. Because we as teachers did not want the reference  
16 part in. The reference, we didn't want that in. This  
17 right here where it says the origins of life is not  
18 taught, that's fine. Our compromise that we put the  
19 word gaps in, that was fine.

20           But the reference out there wasn't -- why do you  
21 need that? If that is the fact, then we should have all  
22 our books in our room referenced. What is the  
23 difference between this? That is what we didn't get.

24 Q.       And you note origins of life is not taught, that's fine,  
25 what do you mean by that, Bob?

1 A. We never taught it.

2 Q. So it just stated existing practice?

3 A. Right. So it was like you can put that there because we  
4 don't do it, anyway.

5 Q. All right. Just so I understand you, therefore the  
6 reference to Jen Miller and Bob Linker that is on the  
7 top of the second page of Linker 1, that just was a  
8 notation which you made to reflect the fact that at some  
9 point in the process, you and Jen --

10 A. Right. And then this was new. But it was funny because  
11 this was kind of a long process me and Jen did over the  
12 years. We were kind of proud of it that we wrote this  
13 because some of the other classes that had to rewrite  
14 their curriculum, they kind of didn't do it as hard. We  
15 would spend day after day in inservice and do it.

16 Now inservice has come up today, which is way  
17 years back and they're going we still have to do our  
18 curriculum or our assessments. And me and Jen worked  
19 hard. Any time I was around here, I went and put our  
20 names there.

21 That wasn't that I wrote that. That was just to  
22 say that we wrote the original curriculum.

23 Q. Now I understand.

24 A. It had nothing to do with any of this. I am sorry.

25 Q. That is quite all right. You are saying that pretty

1                   much because you were proud of your initial role --

2 A.            Correct.

3 Q.            -- in formulating the biology curriculum? Let me ask  
4                   you a question -- and it is in no way intended to  
5                   diminish the credit in creating the curriculum in the  
6                   first place.

7                   You have referenced, as have many other witnesses,  
8                   there was a sort of recalibration of science instruction  
9                   connected with the change in state standards; is that  
10                  correct, Bob?

11 A.            Yes.

12 Q.            Now if you look at this these documents that we have  
13                  laid out here, the curriculum, you will see there's  
14                  reference to a number of days in the upper right-hand  
15                  corner where it says Time (weeks/classes). Just look at  
16                  the first page of Linker 1, for example.

17 A.            (Witness complies.)

18 Q.            The first column, the upper most entry under the entry  
19                  Time, there is 19 days. I think I know the answer to  
20                  this, but I just want to make sure.

21                   Is it true, Bob, that you no longer devote 19 days  
22                  to this subject matter?

23 A.            Correct. And I don't believe we ever did. Where I  
24                  think this happened was when it was originally -- you  
25                  get to the end and it is like we still have 19 days to

1       put in so it would become 90 days. And that's where I  
2       think so many days come in.

3           Also, we used to have a ninth grade science  
4       project which would take a lot of time, and this would  
5       kind of correlate with it. It wasn't Evolution, but  
6       that was our way of getting more days for that. And  
7       now, that's gone. And wow, I don't spend 19 days on  
8       that.

9       Q.    And I realize that, and it is evident from the  
10       testimony, but I just wanted to make sure that it is  
11       clear that essentially with the recalibration of the  
12       state standards, there has been a tailoring of the  
13       curriculum as practiced in Dover to reflect those state  
14       standards and what they require; correct?

15      A.    Correct.

16      Q.    And after that change, although there was change in the  
17       state standards, although there was a change in the  
18       practice, this document wasn't necessarily changed to  
19       reflect the change in instruction in the classroom?

20      A.    This one?

21      Q.    Yes. In other words, let me ask you if this is right or  
22       wrong. The state standards change, and that entails  
23       some change in classroom instruction, both in the way  
24       subjects are presented across disciplines. Some things  
25       I understand from some witnesses which were previously

1           presented in biology are now presented in environmental  
2           class?

3 A. Correct.

4 Q. There were changes of that nature as a result of the  
5 change in state standards; correct?

6 A. Yes.

7 Q. But to date at least, there has yet to be a  
8 comprehensive revision of the science curriculum across  
9 the disciplines to reflect the renewed allocation of  
10 subject matter that takes place in the classroom;  
11 there's a gap?

12 A. I am not understanding you. I'm sorry.

13 Q. Don't be because I am not sure my questions are clear.  
14 All I am getting at, Bob, is this: The state standards  
15 changed; classroom instruction changed?

16 A. Correct.

17 Q. But this document wasn't revised to reflect that change?

18 A. Correct.

19 Q. Good enough. All right. Let's talk about the meetings  
20 you have referenced in -- were they in about October of  
21 2004?

22 A. Yes. That one paper I had the date on, that's great.  
23 That is the first date I ever saw.

24 Q. All right. Tell me about that. You said you were in  
25 meetings, and that the meetings related to the

1 curriculum change. Was there more than one meeting?

2 | A. Yes.

3 Q. Let's try and remember the first one if you can and tell  
4 me what you can about that first meeting, how it came to  
5 be.

6 A. I remember meetings with Mr. Baksa, Dr. Nilsen about  
7 these changes and Mrs. Spahr, Bert Spahr saying well, my  
8 teachers are not going to do it because of legality  
9 reasons. And she would have stacks of papers about  
10 court law cases. And I remember her reading them to Dr.  
11 Nilsen and Mr. Baksa many times.

12                   The meeting for this, I remember having three  
13                   drafts in front of me. And I think it was real close to  
14                   the School Board meeting because we said, well, the only  
15                   one we will go for is -- and I don't know if it was this  
16                   one, but it didn't have that on.

17 Q. Let's look again at Miller 7 and look at the Bates stamp  
18 page 20.

19 A. (Witness complies.) Yes.

20 Q. That's the one?

21 A. That is the one that we said this is the one that the  
22 teachers would like.

23 Q. Right.

24 A. That's the one that we compromised by allowing gaps in.

25 Q. Let me just try and get that straight and make sure you

1 are definite on that point. Again, Bob, if you look at  
2 the memo for that, that is the recommended changes to  
3 the biology which is Bates stamp page 19, you will see  
4 it is dated October 13th. And it is billed as  
5 recommended changes to the biology curriculum from the  
6 administration and staff.

7 Now if you continue further through Miller 7 and  
8 you look at the next memo Bates stamp 21 in the lower  
9 right-hand corner, you will see that that memo is dated  
10 October 18th, 2004, the day of the Board meeting, and it  
11 is billed as a second draft of the recommended changes.

12 So all I am trying to get at here, Bob, is I  
13 understand there was an initial proposal from the  
14 administration and staff, and then there was a  
15 compromise as you have referenced. But what I just want  
16 to see where you are at on this is my understanding -- I  
17 am not testifying for you; tell me if it is consistent  
18 with yours -- is that XI-B is the original version  
19 proposed by the teachers?

20 MS. PENNY: That would be Bates number 20.

21 BY MR. GILLEN:

22 Q. That is the original version, and then XI-C, Bates  
23 stamped 22, is the compromise version. It is in Miller  
24 7.

25 A. No.

1 Q. Just tell me why do you say that, Bob?

2 A. Because I remember we did not want reference to *Of*  
3 *Pandas and People* on the actual document.

4 Q. Let me ask you this on that score: As of this time, now  
5 this is October 18th, do you recall there being  
6 discussion about what are we going to do with this book,  
7 and whether the biology teachers said if you want to put  
8 it as a reference book or a reference text in the  
9 classroom, that's fine?

10 Do you recall that as of this time, which would be  
11 October 18th, the teachers saying all right, we got the  
12 books, if you want to put them in the classroom fine,  
13 but as you say their position was we are not teaching  
14 it?

15 A. We didn't -- maybe I should speak for myself. I didn't  
16 want anything in my classroom that was going to be  
17 illegal. And the reason I keep going back to this is I  
18 remember Mr. Baksa keep bringing over documents or  
19 drafts, I don't know how many it was, if this was all  
20 the ones, and we kept saying no.

21 But I remember after the meeting what did it  
22 matter? We weren't voting on it. They were deciding  
23 it, and they chose not to pick the one that the teachers  
24 wanted. That's what I remember from it.

25 Q. A couple of things there. Your sense for doing anything

1                   illegal and the way in which *Of Pandas* relates to that,  
2                   was that based on the information that Bert was  
3                   providing?

4   A.   Well, as soon as it said the Intelligent Design, I don't  
5                   know if I -- I would have had the book at that time.  
6                   Based on my background and maybe college, I didn't think  
7                   you could have any religion in a public school.

8                   And that as soon as I saw that word and they say  
9                   it is a higher being, what's a higher being? A higher  
10                  being I know is God. As soon as it said that, I was  
11                  like wait.

12                  When all this happened, like you are asking for  
13                  dates, I know it was happening to me during this because  
14                  I didn't want to be doing something illegal.

15   Q.   And this is the October, 2004 period?

16   A.   Correct, for me.

17   Q.   Had you reviewed the text *Of Pandas* by that time?

18   A.   Yes. I skimmed probably the first -- I remember reading  
19                  the first page. Wow, this is pretty -- this would be  
20                  pretty tough for a ninth grader to read because I had to  
21                  read the first page again in order to understand it.

22                  Then I thought this all talks about the origin of  
23                  life, and we said we don't teach the origins of life.  
24                  And Mr. Bonsell wanted that origin of life definitely to  
25                  be in this. So I wasn't getting it. So that's where it

1. was kind of --

2. Q. Let me just see if I understand your thought process on  
3. that, Bob. Is it essentially your thinking if  
4. Intelligent Design Theory addresses the origins of life,  
5. and the curriculum has a note which says the origins of  
6. life will not be taught, what is the point?

7. A. Correct.

8. Q. You have referenced some meetings with Mr. Baksa  
9. relating to these competing versions of draft  
10. curriculum. When Mike Baksa is coming to you with these  
11. various proposals, is he telling you why he is back  
12. again?

13. I mean did you have a sense that he was trying to  
14. find a compromise position between that of the faculty  
15. and that of the Board that everyone could live with?

16. A. I mean we would say no, we don't want this. And I  
17. remember Mr. Baksa saying I'm the messenger. I remember  
18. him saying -- that is what I remember about him keeping  
19. -- here is another one, here is another one. We said  
20. no.

21. But our compromise -- all I remember is okay, we  
22. will compromise, which I couldn't point to the exact  
23. one. If we did -- I remember they didn't take that,  
24. even our compromise. So then I guess I was mad  
25. personally. I don't know.

1 Q. And just to make sure I understand you there, you are  
2 saying that ultimately, the Board did not accept the  
3 compromise that had been proposed by the administration  
4 and staff?

5 A. By the staff. I don't know if that includes the  
6 administration because they were giving us all kinds of  
7 stuff. So I didn't even know which one -- they were  
8 asking us which one we wanted. I don't know which one  
9 the administration wanted.

10 Q. Let me ask you about that, Bob. Do you have an  
11 understanding as to whether the administration was  
12 onboard wholly with the Board curriculum committee  
13 version, or whether they were trying to find a middle  
14 way between the staff and the Board versions? Do you  
15 have a sense of where they shook out?

16 A. No, I don't think we ever did.

17 Q. Apart from the comment you recall Mr. Baksa making of I  
18 am the messenger, anything else that Mike Baksa said to  
19 you about this process of these draft curriculum changes  
20 and trying to work out an acceptable version?

21 A. I just remember Bert always asking him this is illegal,  
22 and him not saying no, it is not or just -- I don't  
23 know -- I don't remember what he said, but she  
24 constantly said this is illegal. It says it right  
25 there, and this is not the one that we want.

1                   She was pretty much -- it was the Assistant  
2                   Superintendent and the Department Chair. So she was  
3                   pretty much our spokesperson for when those meetings  
4                   would happen, even though we could talk whenever we  
5                   wanted.

6   Q.    I understand. When you say this is illegal, the it is  
7                   Intelligent Design?

8   A.    Correct.

9   Q.    And let me just ask you: For your personal input, did  
10                  you speak with Mike for yourself with respect to these  
11                  various drafts? Did you say this is the one I want to  
12                  Mike Baksa personally, or was Bert your spokesman?

13   A.    No. It was all of us for talking about these. She  
14                  didn't say this is the one because she doesn't even  
15                  teach biology. So she would always refer to me or Jen  
16                  or Rob, and we said this is the one that we compromised  
17                  for.

18                   And the other ones -- the stuff that would get  
19                  Bert riled up was any time it said Intelligent Design in  
20                  it because she said I am protecting my teachers in case  
21                  this is illegal.

22   Q.    Okay. During this process, this back and forth  
23                  surrounding the curriculum drafts, did you speak with  
24                  Dr. Nilsen about the matter?

25   A.    He come -- he was in one of the meetings where they

1                   definitely -- Bert definitely talked directly to him  
2                   you're telling me that if I have to do this, you are  
3                   putting my teachers in jeopardy of being something  
4                   illegal? I don't remember his responses, or Dr.  
5                   Nilsen's, but I remember Bert.

6                   I remember her going at it. And it wasn't like a  
7                   nice tone because I guess we were dealing with it for so  
8                   long.

9                   Q.        Okay.

10                  A.        I remember her saying are you telling me to tell my  
11                    teachers to do this stuff? I guess that was maybe  
12                    passed -- after this was passed. Like a timeline, that  
13                    might have been leading up to when we had to say like a  
14                    statement.

15                  Q.        What you are saying now may be after the curriculum  
16                    change was actually approved?

17                  A.        Correct.

18                  Q.        And now the question is what do we do with it?

19                  A.        Right.

20                  Q.        Looking at the -- all I am trying to get at here is your  
21                    sense for the process which resulted in these competing  
22                    drafts and what was at issue.

23                   It seems to me, Bob, that at this point while Bert  
24                   is soliciting input from you as the biology teachers  
25                   regarding what you want for the proposed biology

1 curriculum, she is the point person vis-a-vis the  
2 administration on the issue, or is it she and Jen?

3 It doesn't seem that you were all that involved.

4 It seems that they came to you and so on. I am just  
5 trying to figure out who is speaking at this point for  
6 the teachers, the faculty.

7 A. Well, any -- I don't know if I was in every meeting, but  
8 everybody spoke. It is just that she can get mad quick  
9 about a certain thing, and then she would -- she always  
10 had her stuff on legality that I guess she researched  
11 personally.

12                   And if it was there, obviously I thought that all  
13                   along, that it was illegal. But I guess she took the  
14                   time where I am a set back guy going well, they are  
15                   going to tell me what to do. And she was doing the  
16                   protecting of her Biology Department. That is kind of  
17                   way I felt.

18                   But Jen, I believe it was Mr. Baksa or Dr. Nilsen  
19                   started talking to Jen about some of the stuff also.

20 When I say stuff, it would have had to have been about  
21 this.

22 Q. The competing versions of the curriculum change?

23 A. Right. And just going to talk to Jen maybe because Bert  
24 Spahr would get a little wound up quick. But I don't  
25 know -- I want to say that Bert is the spokesperson for

1       us. She is our Department head so she speaks up pretty  
2       quick.

3   Q.    I think I understand now. It seems like Bert had a  
4       concern with legality, and that was the issue she was  
5       principally speaking on; is that true, Bob?

6   A.    Yes.

7   Q.    Whereas you guys were speaking to the curriculum which  
8       you and Jen had drafted. Let's look at these meetings.  
9       It seems to me you can't really break them up? You know  
10      there was more than one, but they kind of blend  
11      together?

12   A.    Correct.

13   Q.    If you just look at those meetings, you have recalled  
14      Mike Baksa saying I am the messenger here. Anything  
15      else that Mike said vis-a-vis the Board's purpose in the  
16      contemplated curriculum change that you can recall?

17   A.    Not specifically. I can't quote anything so I don't --

18   Q.    I understand that. You are just trying to remember.  
19      How about the impression you had? Did you have an  
20      impression as to what the Board was after here?

21   A.    My impression was that they wanted the word --  
22      definitely wanted the word Intelligent Design in and  
23      wanted the reference *Of Pandas and People*.

24   Q.    And now did you have a sense for why, Bob, at this  
25      point? I mean as you say, they want it in there. I

1 note on the second page of Linker 1, you have the term  
2 teach written in the lower left-hand corner and gaps and  
3 problems underlined in the bottom most entry in the  
4 second column under Unit Content/Concepts. What does  
5 that refer to?

6 Does that reflect what you said before which is we  
7 teach those already?

8 A. Where I have it underlined?

9 Q. Yes.

10 A. I don't know -- where it says -- this is my recollection  
11 where it says teach, and above it it says 0 day, that  
12 was me saying I am going to teach that 0 day because it  
13 has Intelligent Design in it.

14 Q. Okay.

15 A. That's what I think. That was my doodling saying it  
16 says Intelligent Design, I am going to teach it the  
17 number of days zero. I think that was my doodling that  
18 day. I can't tell you why I did it, but...

19 Q. All right. Well, anything else that Dr. Nilsen said to  
20 you in response to the comments that you or any of the  
21 faculty offered about these rival versions of the  
22 curriculum change?

23 A. About these papers?

24 Q. Yes.

25 A. I remember Mr. Baksa being on most of these.

1 Q. Okay.

2 A. I truthfully might not have been at some of them that  
3 they did, but I do remember seeing three of them right  
4 before the Board meeting that was voted on. I remember  
5 coming back and going well, they picked it. I said  
6 which one did they pick either to Jen or Bert? They  
7 picked the one -- they didn't pick ours, the one that we  
8 compromised. They picked theirs, which was which one I  
9 am not sure. Probably one of these.

10 Q. Interestingly enough, it is none of them. The final  
11 result was a compromise between XI-A and XI-C, but you  
12 need not go into that.

13 A. Okay.

14 Q. So let's talk about the meeting. Did you attend it,  
15 Bob? Did you attend the Board meeting on October 18th,  
16 2004?

17 A. No.

18 Q. You have indicated at some point, you got word as to the  
19 results of the vote. When was that about?

20 A. Probably the next day.

21 Q. Did you have discussion with your colleagues at that  
22 time about what does this mean for classroom  
23 instruction?

24 A. I am sure, but I can't pick -- did we have a meeting? I  
25 don't remember any meeting where now this is what we are

1 going to do.

2 Q. That is what I am getting at. You are going through  
3 this process. There is a curriculum change that is  
4 proposed.

5 Do you have a sense as this process is working its  
6 way out up to October 18th, 2004, well, what does it  
7 mean for classroom instruction, what is it going to make  
8 me do?

9 A. Yes. And me personally, if it was in my curriculum,  
10 that means I should or have to teach it. So that's when  
11 I got a little -- well, first of all, I don't really  
12 know what it is about, and I am not an expert on it, so  
13 how am I going to teach it?

14 And is it legal for me to teach this? And if I do  
15 teach it, am I getting sued by a parent? That's where I  
16 started thinking this is getting wild.

17 And I don't know when -- we asked our union about  
18 it then, what is going to go on about this. I don't  
19 know when that was in the actual timeline, but they said  
20 they would come in and tell us what we're supposed to do  
21 or help us tell us what we are supposed to do. Because  
22 we were all concerned then.

23 Q. And the notion of teaching it, Bob, let's look at that  
24 for a minute and look at the period between August and  
25 October of 2004. You have indicated, you know, how can

1 I teach it, I don't know enough about it.

2 In any of the meetings you have referenced, was  
3 there discussion of that with the administration about I  
4 am not qualified to teach this subject matter; do you  
5 recall discussions along those lines?

6 A. Yes. I think I might have even brought up the question.  
7 I think it might have been -- I don't know if it was in  
8 this room or not. I remember asking if it was Dr.  
9 Nilsen and Mr. Baksa, but Mr. Baksa answered by saying  
10 we will have to get classes or seminars. That is what I  
11 remember him saying.

12 Q. When was that meeting that you recall?

13 A. After this Board -- I believe definitely afterward.

14 Q. Do you recall Bert Spahr ever coming to you and  
15 saying -- this is prior to October 18th. Do you recall  
16 Bert Spahr coming to you and saying well, maybe we are  
17 going to have to do a statement or something; we are  
18 going to have to read a statement prior to October 18th?

19 A. I don't know if it was prior. But when you say  
20 statement, that's like word. Yeah. But when did that  
21 happen? I don't know.

22 Q. Let me ask you one last question here. If you look at  
23 the various versions of the curriculum change, you will  
24 see that they have this language: Students will be made  
25 aware of, and then they go on.

1 MS. PENNY: Pat, which one?

2 MR. GILLEN: He can look at the first page of  
3 Linker 1 as an example. The bottommost entry in the  
4 second column, you'll see students will be made aware  
5 of, and then they go on and they vary as we noted.

6 BY MR. GILLEN:

7 Q. Do you recall discussions with the administration what  
8 does that mean students will be made aware of?

9 A. No.

10 Q. How about your colleagues, do you recall speaking with  
11 Bert or Jen about students will be made aware of, how  
12 are we supposed to make them aware of it?

13 A. Me personally, I don't remember like discussing it. I  
14 am just thinking well, the gaps and problems of Darwin's  
15 Theory, other theories would be something like  
16 Intelligent Design. And I figured -- I remember  
17 originally that the book was going to be in the back of  
18 the room, and we could say there's other theories such  
19 as Intelligent Design. If you would like to look into  
20 that theory, here is the book.

21 Q. On that score, when you present, do you look at some of  
22 the other theories that are in the Miller and Levine  
23 text do you draw the kids attention to that like  
24 Lemarkian?

25 A. I am going to say sometimes. It is just based on what

1 kind of kids I have, if they start asking a lot of  
2 questions. Some classes, they'll ask all kinds of  
3 questions. Other ones -- it was all based on the class  
4 and the amount of time that I had.

5 But Lemark was definitely talked about by me. To  
6 what class, I am not sure. What years, I am not sure.

7 Q. But essentially it seems that if the students exhibited  
8 some curiosity, you would say there are other theories,  
9 and this is one of them?

10 A. Especially before when I divided the chalkboard,  
11 obviously Creationism was the first one I wrote up, and  
12 then Evolution, that is another theory. But I always  
13 said I cannot talk about this because, one, I am not an  
14 expert on it; and number two, we can't bring religious  
15 values into a public school. That's what I would say.

16 Q. Well, now we are after October 18th, and you got the  
17 word to the results of the vote. The next thing we know  
18 is the drafting of the statement. And you know as I do  
19 that Jen had some role in that.

20 I understand the teachers have taken the position  
21 that was just vetted for scientific accuracy. Did you  
22 participate in that process?

23 A. I would say no. I know I didn't write any of it.

24 Q. You are looking at the excusal form?

25 A. Oh, I am sorry.

1 Q. That is quite all right.

2 A. This one? No. I think the only thing I can remember  
3 about this statement is I think that Mr. Baksa stopped  
4 in my room and got a definition from the textbook on one  
5 of the words, but I am not even sure what word it was.  
6 I don't know if it was theory or --

7 Q. Let me ask you about that. Do you recall looking in the  
8 back of the biology text for a definition of theory?  
9 Mr. Baksa coming in and saying Jen says she thinks there  
10 should be a definition of theory; do you recall that,  
11 Bob?

12 A. I remember getting the book for him, but I don't know if  
13 I opened it and got it and said here is where it is, or  
14 he did. I am not sure. I remember him coming into the  
15 room.

16 Q. How about do you recall his inquiry being related to  
17 theory?

18 A. I would say yes because that's I guess the scientific  
19 word in those paragraphs.

20 Q. Do you recall him consulting the glossary of the text?

21 A. Yes.

22 Q. Good enough. Apart from that, anything else you did,  
23 Bob, with respect to this statement?

24 A. No.

25 Q. Did you ever have any discussions with Jen Miller or

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I, Vicki L. Fox, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Cumberland, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

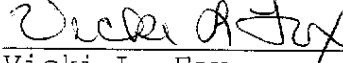
ROBERT LINKER

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Camp Hill, Pennsylvania, this 14th day of June, 2005.

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